IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6220 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRANAV GANESHBHAI CHAKRAVARTY - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
Mr. Bhaskar P. Tanna, Senior Advocate assisted by Mr. Nikhil Kariel for TANNA ASSOCIATES for Petitioner(s) : 1,
Mr. Mihir Joshi, Additional Advocate General with Mr. Maulik Nanavati, AGP for Respondent(s) : 1 - 3.
MR LR PUJARI for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 6/2/2007

JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner has

prayed for an appropriate writ, order or direction quashing and setting aside the impugned order of termination dated 19th August 1997. It is further prayed to direct the respondent authorities to treat the petitioner as continued in job as if the impugned termination order dated 19th August 1997 is never passed.

2. At the outset, it is required to be observed that more than 50% of the posts in Departments falling under Medical Services, Public Health Services and Medical Education are being occupied by adhoc employees dehors the statutory recruitment rules and not being filled by the Gujarat Public Service Commission [for brevity sake 'GPSC'] selected candidates. It is required to be noted that the rules prescribed for recruitment to various posts in Medical Services, Public Health Services and Medical Education provide for appointment by direct selection and the recruitment rules clearly contemplate that selection will be made by the

GPSC and inspite of such provision, as stated above more than 50% of the posts in aforesaid services are filled-in and occupied by ad-hoc Lecturers who were initially appointed by way of stop-gap arrangement till candidates selected by the GPSC are appointed on regular basis. However, the said adhoc appointments continues for years together giving a chance to ad-hoc Lecturers/appointees to claim for regularization on the ground that they are continued on adhoc basis since years.

3. It is the case on behalf of the petitioner that he is holding degree in MBBS and was working as Medical Officer in Primary Health Centre, Kharod, Taluka Vijapur, Dist-Mehsana. However, he has chosen to serve as a Tutor in Physiology Subject under the State Government. By order dated 14.6.1994 he was appointed as an 'Adhoc Tutor' in Physiology. It is the case on behalf of the petitioner that he was selected by the GPSC for the post of Medical Officer, Class-

II, but due to his interest in gaining deep knowledge and imparting the same to the students he has chosen to remain as 'Tutor' giving up his chance to be appointed as Medical Officer. It is submitted that the appointment order of the petitioner dated 14.6.1994 does stipulate the condition that the adhoc appointees are subjected to selection procedure adopted by GPSC and if they fail therein or even if they fail on making application to the GPSC in pursuance to the advertisement then his services are liable to be terminated. It is submitted that there are 9 sanctioned posts available in the Baroda Medical College and there are many more posts of Tutor in Physiology available all over Gujarat and so far as the Medical College, Baroda is concerned, out of those 9 existing posts, 4 posts are being manned by regularly selected GPSC appointees/Tutors in Physiology and 4 posts are occupied by persons like petitioner who are all ad-hoc appointees, and one post was lying vacant. That by impugned order dated 19.8.1997 the

petitioner's services were sought to be terminated and therefore the petitioner has preferred the present Special Civil Application under Article 226 of the Constitution of India.

4. It is the contention on behalf of the petitioner that he was called to appear at the personal interview for the post of Tutor in Physiology, GSS, Class-II by GPSC by call letter dated 29.10.1996 and along with the petitioner two juniors, namely Dr. Hansa M. Jadav and Dr. Shruti H. Shah also appeared before the GPSC and unfortunately the petitioner did not succeed in the interview whereas the aforesaid two juniors were placed in waiting list. It is further submitted that the persons who were subjected to interview in pursuance of the Advertisement No. 66/96-97 have already been appointed and therefore it is not open to the State Government to say that the petitioner's services are sought to be terminated as the GPSC candidates are available and hence the petitioner's termination

was unwarranted.

5. This petition came up for Final Hearing on 28th December 2006 when it was pointed that by order dated 2.10.2003 the petitioner came to be appointed as Associate Professor in Physiology at Government Medical College, Bhavnagar on purely temporary and adhoc basis for a period of 6 months or till the post is filled-in on regular basis or till further orders whichever is earlier. It is required to be noted that the petitioner was appointed as Tutor on adhoc basis and the petitioner is never made permanent and/or appointed on regular basis as a Tutor, still the Commissioner, Medical Health Services and Health Education, Gandhinagar, appointed/promoted the petitioner as Associate Professor in Physiology on adhoc basis. It is required to be noted that the post of Tutor/Associate Professor and other posts in institutions such as Medical Health Services and Medical Education in the State of Gujarat are required to be filled-in by

candidates selected by GPSC only. As it was found that most of the posts in Medical Health Services and Medical Education continued to be occupied by those persons not selected by GPSC, this Court called upon the State Government to give full particulars with regard to the posts vacant in the aforesaid 3 services to be filled in by regularly selected candidates and occupied by the adhoc appointees and the vacant posts in Medical Health Services, Medical Education etc., and a very shocking figure has come out. This Court wanted to issue certain directions to fill-up the posts by candidates selected by the GPSC on regular basis and therefore by order dated 28.12.2006 GPSC was also joined as party respondent and Shri Pujari, learned advocate appeared on behalf of GPSC.

6. Shri Mihir Joshi, learned Additional Advocate General appeared with Shri Maulik Nanavati on behalf of the State Government, and Shri Pujari, learned advocate appeared on behalf

of the GPSC. Shri Joshi, learned Additional Advocate General has given the particulars with regard to the posts available; posts filled-in by regularly selected candidates; posts occupied by adhoc appointees; and the posts remaining vacant. It has been submitted that so far as Medical Education is concerned, there are 1799 posts out of which 674 posts are filled-in by regularly selected candidates by GPSC; 789 posts are filled-in by adhoc appointees; and 343 posts are still vacant. Thus, in Medical Education Department, 1129 posts are required to be filled-in by candidates selected by GPSC on regular appointment. It is further submitted that so far as Medical Services are concerned, there are in all 672 posts, out of which 221 posts are filled-in by regularly selected candidates; 87 posts are occupied by adhoc appointees; 364 posts are vacant. Thus, in Medical Services 451 posts are required to be filled-in by regularly selected candidates by GPSC. So far as Public Health Services is concerned, the position is still

worse. He has submitted that there are in all 2878 posts in the Public Health Services Department, out of which 1546 posts are filled-in by regularly selected candidates by GPSC, and 1129 posts are filled-in and occupied by adhoc appointees; and 203 posts are still vacant. Thus, so far as Public Services Department is concerned, 1332 posts are required to be filled-in by regularly selected candidates of GPSC. It is also submitted by Shri Joshi that so far as Medical Education is concerned, requisition for 838 posts are sent to the GPSC, and requisition for 311 posts is sent to the GPSC so far as posts in Medical Service Department is concerned. He has also submitted that requisition for 291 posts in Medical Education, requisition for 140 posts in Medical Service Department, and requisition for 1332 posts in Public Health Services Department are yet to be sent to the GPSC, and under instruction from the Secretary and Commissioner of Health Medical Services and Medical Education, State of Gujarat he has made

the statement at the Bar that so far as Medical Faculty is concerned requisition for remaining 291 posts will be sent to the GPSC on or before 31st March 2007. He has further made a statement that so far as Medical Service Department is concerned, requisition for remaining 140 posts will be sent to the GPSC by 28th February 2007. He has further made the statement that so far as Public Health Services Department is concerned, requisition for 1332 posts will be sent to the GPSC on or before 28th February 2007. Shri Joshi, learned Additional Advocate General has further submitted on instructions that after recommendation by the GPSC posting orders will be issued as early as possible preferably within a period of 2 months but not later than 3 months in any case.

7. Shri Pujari, learned advocate appearing on behalf of GPSC has submitted that from the date of receipt of requisitions from the State Government if there is any query and/or any

clarification is required, GPSC will immediately revert back to the State Government within a period of one month from the date of requisition and in turn the State Government may reply to the GPSC within the period of one month thereafter. It is further submitted by Shri Pujari that after the requisition is received the GPSC will give advertisement in local newspapers inviting applications for appearing in examinations/interviews within 2 months and thereafter the entire exercise inclusive of holding of examinations/interviews, declaration of results, recommendation to be made to the State Government will be completed within a period of six months from the date of such advertisement.

8. As stated above, the posts in Medical Education Department, Medical Service Department and Public Health Services Department under the Commissioner of Medical Health service and Medical Education, State of Gujarat, are required

to be filled-in by the candidates selected by the GPSC and the recruitment rules clearly contemplate that selection will be made by the GPSC. As stated above, more than 50% posts in Medical Education Department, Medical Service Department and Public Health Services Department are filled in either by adhoc appointees and/or some of the posts are vacant. Considering the above statement, it appears that less than 50% posts are filled in by candidates selected by the GPSC. Thus, more than 50% posts are filled-in dehors the statutory recruitment rules. The learned Additional Advocate General has tried to make out a case and justify the need for adhoc appointment. It is submitted that it is essential for the Medical Colleges to get recognition from the Medical Council of India and Dental Council of India and the said Councils have prescribed certain norms for getting the recognition and continuance thereof, and as per the said norms the Colleges must have a minimum number of Tutors, Associate Professors,

Professors etc., in order to continue the recognition of the Medical/Dental Council of India. It is submitted that if any College does not maintain minimum number of posts of teaching staff its recognition is likely to be cancelled or number of posts may be decreased. It is submitted that the policy of ad-hoc appointment is required to be continued to maintain the health and medical services in hospitals attached to Medical Colleges and also to fulfill the norms stipulated by Medical Council of India and Dental Council of India. It is submitted that recruitment through GPSC takes more time but vacancies may arise at any time because of various reasons and till the candidates available after being selected by GPSC the vacancies cannot be allowed to exist as it hampers imparting of education as well as treatment to patients. The sum and substance to justify making adhoc appointment is to continue recognition by the MCI and Dental Council of India. The Division Bench of this Court in the

case of ***K.D. Vohra Vs. Kamleshbhai Gobarbhai Patel,*** reported in ***2003(2) GLR Page 1343,*** has deprecated the policy of the State Government in making appointment on ad-hoc basis and to continue the same for years together and not filling up the posts by regularly selected candidates selected by GPSC. The case before the Division Bench was that those adhoc appointees who have continued for years together were claiming regularization on the ground that they are continued for years together. It is observed by the Division Bench that the local appointments of adhoc Lecturer by way of stop-gap arrangement as per the procedure prescribed by the Circular was not intended to prescribe any alternative mode of regular appointment and such appointments are subject to availability of regular recruits. Not only that but the Division Bench has gone to the extent of observing that statutory obligations require the executive authorities to fill-up the posts of Lecturers in Government colleges by following procedure of direct

selection through GPSC, for which the requisitions were to be sent when vacancies arose and the law do not permit adhoc appointments to these posts beyond one year without consulting the GPSC. It is further observed by the Division Bench that the executive authorities do not consult the GPSC for years together and continue the appointments of adhoc Lecturers illegally and the said breach of statutory duty cast upon the Executive was obviously known to the concerned authorities and they acted with reckless indifference to the consequences of their inaction in the matter of undertaking the process for direct recruitment. The Division Bench also observed that conduct of the authorities in arbitrary continuance of adhoc appointees is violative of fundamental rights of others who would have otherwise had an opportunity to compete for selection. The relevant observations of the Division Bench are reproduced as under;

13. Selection by way of local arrangement for a stop-gap appointment of lecturer by local committee in which the college concerned had a major voice by virtue of its principal and senior most lecturer being the member of the Committee, of which quorum was three, can hardly be compared with the selection by the Gujarat Public Service commission, which is a constitutional body, for regular appointment to the post in the cadre of Lecturers, Gujarat Education Service, Class II, as per the recruitment rules. The purpose of such recruitment is aimed at securing the best available talent for the teaching post. There is nothing common between such local committees and the GPSC. The functions of the PSC are meant to ensure that vacancies are filled by deserving and capable hands and are not filled either by the relatives or friends or flatterers. Though the powers of the PSC are advisory in character, it is required to be consulted, as provided by clause (3) of Article 320 of the Constitution, unless such consultation is dispensed with by a regulation made under the proviso to clause (3) in respect of the specified matters or particular class of case or circumstance. The Commission having been entrusted with the constitutional duty to select suitable candidates by inviting applications from the open market, every eligible candidate will have a fundamental right to seek consideration for selection through open competition (See P. Ravindran v. Union Territory of Pondichery, reported in (1997) 1 SCC 350).

13.1 The fact that there is no provision in the Constitution which makes the acceptance of the advice tendered by the PSC, when consulted, obligatory renders the provision of Article 320(3) directory, and not mandatory, but that does not amount to saying that it is open to the executive government completely to ignore the existence of the Commission or to pick and choose cases in which it may or may not be consulted. The proviso to clause (3) of Article 320 clearly envisaged framing of regulations which are to be led before the Legislature, if at all the process of consultation is to be dispensed

with in matters which are to be specified. Once such regulations have been made, they are meant to be followed in letter and spirit. It would not be open to the executive government to bypass the process of recruitment through open competition to be held by the PSC in services which fall within its purview under Article 320 of the Constitution.

14. After having the experience of working of the Government of India Act, 1935, which, in section 266, provided for functions of the Federal and Provincial Public Service Commissions, the defects that were noticed in practice were sought to be remedied in Article 320 (embryonic form of which was Article 286 in the Constituent Assembly Debates), by seeing to it that the regulations exempting certain things from the scope and jurisdiction of the PSC have to be placed before the Parliament or Legislature, as the case may be, for its scrutiny from time to time. Article 320 provides a check, and indeed a very good check, on the vagaries of the Executive by providing that the regulations specifying matters in regard to which it will not be necessary to take the advice of the PSC, are laid before the Legislature and the Legislature will have the power not merely to criticize such regulations, but to amend them in any manner that it likes. This would ensure that no regulations would operate unless the Legislature approves them. Furthermore, by Article 323(2) of the Constitution, the State Public Service Commission has been enjoined with a duty to present annually a report of its work to the Executive and the Governor is required, on receipt of such report, to cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted and the reasons for such non-acceptance, to be laid before the Legislature of the State. Thus, should the Executive be tempted unduly to disregard the advice of the PSC, the representatives of the people will have an opportunity of scrutinizing such action of the Executive and preventing the Executive, in future, from

disregarding the considered advice of the Commission. With the checks provided in these Articles, there is a reasonable certainty that the Executive will be disposed to act with caution and not to exercise its powers in an arbitrary fashion and act as if the Public Service Commission did not exist.

14.1 It will not be out of place here to remind ourselves that, on 26th November 1949, while adopting the Constitution, the President Dr. Rajendra Prasad, while pointing out the salient features of the Constitution, inter alia, observed;

> *"Our Constitution has devised certain independent agencies to deal with particular matters. Thus, it has provided for Public Service Commissions, both for the Union and for the States and placed such Commission on an independent footing so that they may discharge their duties and without being influenced by the Executive. One of the things against which we have to guard is that there should be no room as far as it is humanly possible for jobbery, nepotism and favouritism. I think the provisions which we have introduced in our Constitution will be very helpful in this direction."*

15. It would follow from the nature of the functions of the Public Service Commission that, being associated with all matters relating to methods of recruitment to civil services and for civil posts and on the principles to be followed in making appointments, promotions and transfers, as also with the suitability of candidates for such appointments, promotions or transfers, the PSC is under a constitutional obligation to exercise its powers to be consulted in all matters in which it is required to be consulted and the Executive is under the constitutional obligation to consult it in all matters

which are not specifically excluded by the regulations made under the proviso to clause (3) of Article 320. Deliberate and consistent failure on the part of the Executive to consult the PSC in matters in which it is constitutionally obliged to consult, notwithstanding the advice may not be binding on it, would bring about a situation in which it would appear that the governance of the State is not carried on in accordance with the provisions of the Constitution, by on one hand paralysing a constitutional body like the PSC from functioning and on the other, short circuiting the provisions which require regulations under the proviso to clause (3) to Article 320 to be framed and to be laid before the Legislature which can modify them, for deciding in which specified matters, consultation with the PSC is to be dispensed with. The power of the Legislature in context of such regulations cannot be scuttled by the Executive by going beyond the regulations which specify the matters for which it is not necessary to consult, by refraining from consultation as regards the matters not so covered by such regulations. The PSC is under a Constitutional obligation to send annual report which has to be laid before the Legislature under Article 323 and in such report, it would be obligatory on its part to report about any deliberate inaction on the part of the Executive Government to consult the PSC in respect of the matters in which it is required to be consulted in the absence of the regulations under the proviso to clause (3) of Article 320, and point out the fact that it could not do its work due to such inaction, deliberate or negligent or because of reckless indifference, on the part of the State Government so that the Legislature can notice the breach of the constitutional requirement of consultation from such report and take necessary action expected of it.

16. As noticed above, consultation with the Commission in any of the matters specified in paragraphs (a) and (b) of clause (3) of Article 320 is not necessary in respect of the posts specified in the Schedule to the

Exemption from Consultation Rules of 1960 and the post of Lecturer, Gujarat Education Services, Class II, is not included in that Schedule. Such consultation is, however, not necessary in respect of the temporary appointments to all other posts and services for a period not exceeding or not likely to exceed one year as per clause 3(b) of the Regulations of 1960. Thus, no consultation is required when the post is to be filled in for temporary period not likely to exceed one year. This exemption does not authorise the State Government not to consult the PSC in respect of the appointments which are likely to exceed one year. This would mean that, in all such cases, the Government is required to apply its mind and decide before making any temporary appointment whether such appointment is "for a period not exceeding or not likely to exceed" one year. Even in cases where the temporary appointment is not likely to exceed one year, the Government issued circular dated 22nd January 1998 which is mentioned below Regulation 3 of the said Regulations of 1960 that it is necessary to consult the PSC if such temporary appointment involves relaxation of recruitment rules of the post, finalised in consultation with the PSC even in urgent cases. The Circular of 1992 issued by the Government under Article 162 of the Constitution for making local appointments cannot expand the scope of Regulation 3, and enable the Government to make temporary appointments for an indefinite period exceeding one year. It is an unfortunate situation that the GPSC did not worry about the erosion of its power of being consulted by the culpable inaction on the part of the Government to consult it for appointments to the post of Lecturers, Gujarat Education Service, Class II, despite more than 400 vacancies having arisen.

16.1 It was contended on behalf of the PSC that, in absence of getting the requisition from the Government inspite of its reminders, it could not exercise its functions. Correspondence was shown to us reflecting the inaction on the part of the Executive in not consulting the GPSC in respect of these vacancies and the lukewarm

attitude of the Executive. The GPSC need not have felt itself helpless in not being able to do its work and could have resorted to appropriate legal proceedings for seeking a remedy against the State Government for compelling it to perform its local obligation to consult the Commission in matters in which it was as per the Rules, Regulations and Constitutional provisions required to be consulted. Such inaction on the part of the GPSC as well as the State Government, which had put the machinery of consultation in context of these posts to disuse, verges on negligence in performance of the statutory functions, and amounts to a reckless disregard to the consequences of such inaction in breach of statutory duties entrusted to them. Such reckless inaction and breach of statutory duties would obviously be attributable to the individuals who were required to discharge their functions according to the rules, regulations and the constitutional provisions requiring consultation with the GPSC in the matter of such appointments.

21. Thus, a very sad picture emerges. There has been a total callousness on the part of the Executive as well as Gujarat Public Service Commission which is a constitutional authority, in the discharge of their important constitutional functions in the matter of making appointments to the cadre of Lecturers, Gujarat Education Service, Class II (Collegiate Branch). Appointments on ad hoc basis were made from time to time and there has not been any attempt to consult the GPSC by sending requisitions for all these posts or for extension of ad hoc appointments beyond one year of the initial appointments. From what the learned Advocate General and the counsel for the GPSC have stated before us during the arguments, though quarterly statements of the ad hoc employees were required to be sent to the GPSC, as per the government orders in force, they were in fact not so sent for over a decade. The government, in their Education Department, put up an excuse in their

communication dated 18th August 1998 addressed to the GPSC that the ad hoc lecturers were appointed locally till the end of the academic term, but some of them obtained interim orders from the Courts for being continued till regular PSC recruits were available, and therefore, they had to be continued. The PSC in their letters dated 27th January 2000 and 12th March 2001 addressed to the Government lamented that despite their reminders, no information of ad hoc lecturers was being furnished to it, nor was any proposal received by it for continuing such ad hoc employees. In the letter dated 12th March 2001, the GPSC raised its meek voice stating that it was neglected for over ten years in respect of these ad hoc appointments, and that it took serious note of indifference and negligence of the Government and further that, if reply was not sent in 15 days, the PSC will make a note of this matter in its annual report (under clause (5) of Article 320). On 20th March 2001, the Government sent reply to the GPSC with a request not to make a note about its lapse (of not consulting the GPSC) in its annual report. The correspondence was shown to us by the learned Advocate General and the learned counsel for the GPSC, because, during the hearing, we asked them to explain to us the inaction on the part of the Executive and the GPSC that had resulted in the present impasse of the ad hoc lecturers continuing for long years and many over ten years and the GPSC candidates not being appointed as per the recruitment rules for all these years. Copies of this correspondence are placed on record and it makes a dismal reading showing the utter careless and indifference of both these august bodies.

22. No chastisement nor expressions of dismay and disappointment have yielded any result in the past. This is because the concerned officials of the Executive and the GPSC may be labouring under an impression that nothing more can be done in respect of such conduct amounting to negligence, recklessness in discharge of duties in public office or breach of statutory duties.

Administrative law directly affects the functioning of the Executive by issuing writs or orders instructing the administration how to act or what to refrain from doing, in accordance with their statutory duties. Yet, there are many situations where the administration may have functioned improperly, but no effective remedy can be employed post facto. What is done is done, to be left as "fait accompli". Usually administrative law does not award monetary compensation over losses caused by the infringement of rights except in rare cases, but in this regard, tort law makes a huge difference. As one of the aims of judicial review is to encourage the public authority to function properly through deterrence, it stands to reason that tort law may and often prove to be more effective deterrent than administrative law, for, the authority may take risk of being ordered to change its ways if court order is issued, but it may hesitate to take such risk if it involves liability to pay substantial compensation. In cases where plea of immunity is not legally available, the court may consider whether to impose tort liability on public authorities exercising statutory powers and while doing so, it is actually engaged in judicial review of the decision and functioning of the executive in order to decide whether the latter exercised its powers properly. The imposition of tort law liability is tantamount to a finding that the executive failed to function properly, and that, affected person is entitled to rectifying remedies against the authority. This venue of judicial review would co-exist with the judicial review conducted by the Courts by applying administrative law, to make the constitutional remedies more effective in the public law field.

23.2 The exercise of power by not sending the requisition causing the ad hoc lecturers to continue contrary to the recruitment rules was invalid in the sense that the concerned public officer had no power to continue them beyond one year without consultation with the PSC and by continuing them beyond one year, the power had been miscarried by the public officer. Thus, the

first element of the tort of misfeasance in public office, namely, the public officer committed an invalid act or omission stands established on admitted facts.

23.3 Second element of this tort which requires that the public officer knowingly acted in abuse of power is also established, because, it is evident that the public officer involved acted with actual knowledge of lack of power to continue ad hoc appointees beyond one year in face of the specific provisions of the Constitution, the Recruitment Rules and the General Rules and in arbitrarily continuing the ad hoc appointees and not following the recruitment rules and procedure prescribed for recruitment to the post.

9. Inspite of the above criticism/observation by the Division Bench of this Court, the things have not improved at all and the posts which are required to be filled-in by the regularly selected candidates by the GPSC are continued to be filled-in and occupied by those persons not selected by GPSC. Thus, dehors the statutory recruitment rules the adhoc appointees continue to occupy the posts which are required to be filled-in by the candidates selected by the GPSC. Considering the figures as stated above, a very sad picture emerges. There has been total callousness on the part of the

Executive as well as the GPSC which is a Constitutional authority in discharge of their important Constitutional functions in the matter of making appointments on various posts in Medical Education Department, Medical Service Department and Public Health Service Department. Inspite of the Division Bench observations, there is no improvement in the function of the authorities concerned which shows the message has not reached the concerned authorities.

10. As stated above, learned Additional Advocate General appearing on behalf of the State Government has made a statement that requisition for all the remaining posts will be sent latest by 31st March 2007, so far as Medical Faculty is concerned; and as regards Medical Service Department and Public Health Service Department, requisitions for remaining posts will be sent to the GPSC by 28th February 2007 The statement made by the learned advocate appearing on behalf of the GPSC is recorded as stated above.

11. Under the circumstances, after considering the statements made at the Bar on behalf of the State Government as well as the GPSC, the following directions are issued;

(i) The State Government and the concerned Departments are directed to send requisition for remaining 291 posts in Medical Education Faculty to the Gujarat Public Service Commission on or before 31st March 2007;

(ii) The State Government and the concerned Departments are directed to send requisition for remaining 140 posts in Medical Service Department to the GPSC by 28th February 2007.

(iii) The State Government and the concerned Departments are directed to send requisition for 1332 posts in Public Health Service Department to the GPSC on or before 28th February 2007.

(iv) After receipt of requisitions from the State Government, if there is any query and/or clarification from the Gujarat Public Service Commission, the GPSC shall immediately revert back to the State Government within one month from the date of receipt of requisition. The State Government and the concerned Department shall reply to the GPSC within the period of one month thereafter in respect of any query and/or clarification as may be necessary to do so within the aforesaid stipulated time.

(v) After the requisition is received, the GPSC shall give advertisement in local newspapers inviting applications for appearing in the examinations/interviews within the period of 2 months and thereafter the entire exercise inclusive of holding of examinations/interviews, declaration of results, recommendation to be made to the State Government shall be completed by the GPSC within the period of 6 months from the date of such advertisement.

(vi) On receipt of the recommendation from the GPSC, the State Government under the concerned Department is directed to issue appointment orders accordingly within the period of 2 months from the date of receipt of the result and/or the recommendation from the GPSC whichever is later. Thus, right from the date of sending requisitions and till the date of issuance of appointment orders, the entire exercise shall be completed within the period of 11 months, meaning thereby as far as possible/practicable no posts in the aforesaid department shall be continued to be filled-in by ad-hoc appointees for more than 12 months.

(vii) If a candidate who is offered appointment on the basis of the recommendation of the GPSC does not report for duty and/or join the duty within the stipulated time, the State Government and the concerned department shall immediately approach the GPSC for operating the select

list/waiting list further, and the post/s should be offered to the next available candidate immediately.

(viii) In future, as and when the posts fell vacant, either due to retirement, transfer and/or for some other reason, the State Government shall immediately send requisition to the GPSC, but not later than one month after the vacancy has arisen. However, as far as possible, the requisition must be sent to the GPSC well in advance even much prior to the date on which the posts would fall vacant.

(ix) As stated above, there are 1129 posts required to be filled-in by regularly selected candidates by GPSC in respect of Medical Faculty, out of which requisition for 838 posts are also sent by the State Government and for remaining 291 posts, requisitions will be sent by 31st March 2007. As regards Medical Service Department, 451 posts are required to be filled-in by the

candidates selected by GPSC, out of which requisitions for 311 posts are sent to the GPSC, and for remaining 140 posts, requisitions will be sent by GPSC by 28th February 2007. As regards Public Health Service Department, in all 1332 posts are required to be filled in by the GPSC selected candidates and requisition for all the aforesaid posts will be sent to the GPSC on or before 28th February 2007. Thus, GPSC and the concerned department in State Government, more particularly the Commissioner of Health, Medical Services and Medical Education, are directed to fill-up the posts in all the aforesaid 3 departments within the stipulated time, as stated above.

(x) The State Government, the Commissioner of Health, Medical Services and Medical Education, and the Managing Director of Gujarat Public Service Commission are directed to act accordingly, failing which it will be construed that the State Government is not interested in

complying with statutory recruitment rules but it is interested in continuing the appointments on ad-hoc basis.

12. This Court is not expressing any opinion on merits with regard to the need for making ad hoc appointments and/or whether the State Government and/or the concerned Department/s were justified in making ad-hoc appointments. However, it is clarified that, to fulfill the prescribed norms of getting recognition and/or for continuance thereof cannot be made the basis for not making appointments and/or not filling up the posts by following statutory recruitment rules, and/or to continue the appointments on ad-hoc basis for years together dehors the statutory recruitment rules and thereby giving opportunity to all those ad=hoc appointees to pray for regularization subsequently, which practice has been deprecated by the Division Bench of this Court in the case of ***K.D. Vohra V [supra]***.

13. It is regretted that inspite of the

observations made by the Division Bench of this Court in the case of ***K.D. Vohra [supra],*** there is no improvement in the situation as is evident from the records that more than 50% posts are occupied by the candidates not selected by the Gujarat Public Service Commission and some posts remain vacant. Hence, the State Government and the concerned Department, the Commissioner of Health, Medical Services and Medical Education, and Chairman of Gujarat Public Service Commission are directed to strictly follow the aforesaid directions.

14. Coming to the facts of the present Special Civil Application, the petitioner was initially appointed as a Tutor in Physiology on ad-hoc basis by order dated 14.6.1994 till regularly selected candidate is available. One of the conditions was that the petitioner has to undergo the selection procedure adopted by the Gujarat Public Service Commission and if he fails therein his services was liable to be terminated.

It appears that the petitioner did appear in the GPSC examination pursuant to Advertisement No. 66/96-97, however he was not selected. Still, the petitioner continued in the job as 'Tutor' in Physiology on ad-hoc basis. Not only that, but unfortunately the petitioner further came to be appointed as 'Associate Professor' of Physiology on ad-hoc basis. It is not known how petitioner came to be appointed as Associate Professor on adhoc basis and continued as such. However, this Court is at present not considering whether petitioner could have been appointed as Associate Professor on adhoc basis and/or how he has been continued as Adhoc Associate Professor as that is not the subject matter of the present petition and for which this Court has not expressed any opinion, and it is for the concerned authority to take appropriate decision in light of the decision of this Court in the case of ***K.D. Vohra (supra)*** and in the light of the observation of this Court as above. Thus, considering the Judgment of the Division Bench of

this Court in the case of ***K.D. Vohra [supra],*** the prayer of the petitioner not to terminate his services and to regularise his services as Tutor cannot be granted as he has no right to hold the post on which the appointment made is purely on ad-hoc basis. On going through the appointment order of the petitioner dated 14.6.1994, one of the conditions appears to be that the petitioner shall apply to the Gujarat Public Service Commission as and when the GPSC release advertisement in future and if the petitioner is not selected by the GPSC then his services will be liable to be terminated forthwith. In the present case, as stated above the petitioner did apply for the post of Tutor pursuant to Advertisement No. 66/96-97 and the petitioner did not succeed in the interview and still the petitioner was continued in service. Not only that, but he is further appointed on the post of Associate Professor in Physiology on ad-hoc basis. Thus, the petitioner, who was not selected by the Gujarat Public Service Commission

as a 'Tutor' is now working as 'Associate Professor', i.e., one post higher than the Tutor's post on ad-hoc basis which cannot be permitted. Under the circumstances, the petitioner is not entitled to any relief as prayed for.

15. For the reasons stated above, so far as the petitioner is concerned the petition fails and Rule is discharged. Ad-interim relief, if any, stands vacated forthwith. However, there shall be no order as to costs. So far as the State Government, the Commissioner of Health, Medical Services and Medical Education, and the Chairman of Gujarat Public Service Commission are concerned, they are directed to implement the directions as stated hereinabove and fill-up the posts as stated above in Medical Services, Public Health Services and Medical Education departments by candidates selected by the Gujarat Public Service Commission.

[M.R. Shah, J.]

RMR.